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Supreme Court of the United States

OCTOBER TERM 1956

No. 483

ANTONIO ROIG SUCRS. S. EN C.,
PETITIONER,

v.

THE SUGAR BOARD OF PUERTO RICO,
RESPONDENT.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

To the Honorable, The Chief Justice and Associate Justices of the Supreme Court of the United States:

The petitioner, Antonio Roig Sucrs. S. en C., prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the First Circuit entered in the above entitled case on July 17, 1956, which confirmed the judgment of the Supreme Court of Puerto Rico entered on November 5, 1954 affirming resolution of the Sugar Board of Puerto Rico rendered on July 3, 1952.

Opinions Below

The opinion of the Sugar Board of Puerto Rico is not reported but it is printed in the record appendix at pages 142-160. The opinion of the Supreme Court of Puerto Rico is reported in 77 P.R.R. and it is also printed at pages 182-198 of the Record Appendix. The opinion of the United States Court of Appeals for the First Circuit has not yet been published in the Federal Reporter but it is printed in the record appendix at pages 213-226.[1] A copy of said opinion is appended as Appendix A to this Petition.

Jurisdiction

The judgment of the Court of Appeals was entered on July 17, 1956 (R. A. 227). Thereafter, on August 15, 1956, the mandate was stayed until further order of that Court. (R. A. 227). The jurisdiction of this Court is invoked under the provisions of 28 U.S.C.A., sections 1254 (1) and 2101(c).

Question Presented

Whether it is consistent with the due process clause of the Fifth or Fourteenth Amendments to the Federal Constitution[2] to force a sugar company engaged in the manufacture of raw sugar on the toll basis to purchase the

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[1] Inasmuch as nine additional copies of the record appendices as printed for the use of the Court of Appeals have been filed pursuant to Rule 21(4), the opinions of the Sugar Board and the Court below have not been appended to this Petition. Rule 23(1)(i).

[2] The due process clause of either of the Amendments was invoked by the petitioner in view of the decision of the Court of Appeals in *Mora* v. *Mejias*, 206 F(2) 377, 382 (1953). See also footnote 2 of the opinion of the Court of Appeals in the present case (App. A, p. 22).

sugar pertaining to the cane-farmer, unless the latter elects to receive his share in sugar, where it is found that the majority of sugar companies in Puerto Rico have voluntarily undertaken to purchase the farmer's cane or sugar, and the small farmer receiving his share in sugar, on occasions may be forced to sell it to middlemen or brokers at unreasonable prices because of his lack of preparation, ability and effective means to market his sugar.

Statutes and Constitutional Provisions Involved

1. The chief statute involved is section 7 of the Sugar Act of Puerto Rico of 1951, Act No. 426 of May 13, 1951. 5 L.P.R.A. Sec. 371, which is set out in Appendix B at page 38 of this petition.

2. The Due Process Clause of the Fifth or Fourteenth Amendments to the United States Constitution.

Statement of the Case

As stated by the Court of Appeals, "Historically the centrals[3] in Puerto Rico have either purchased cane from the colonos[4] at a price per ton calculated on the sugar content of the cane or have ground cane for the colonos on the toll basis, the amount of the toll also calculated on the sugar content of the cane". (App. A, p. 21). However, for many years the majority of the centrals have engaged in the purchase of the cane of the colonos.

Under Puerto Rican and Federal Regulations, centrals purchasing the cane from the colonos must pay the minimum share of the raw sugar derived from the cane which

[3] This term is used in Puerto Rico to designate sugar companies in general.

[4] This term is used in Puerto Rico to designate sugar cane farmers or producers.

the statute assigns to the colono at the average c.i.f. price in the New York market during the twelve month period from March 1st of the year in which the cane is ground to February 28th of the following year. Anticipated and provisional payments amounting to not less than 90 per cent of the value of the sugar must be made to the colono during grinding operations, either biweekly, forthnightly, every four weeks or monthly, at the average price in the New York market on any one of those provisional liquidation periods in which the cane is ground. See Rule No. 4 of the Sugar Board of Puerto Rico (infra, Appendix D, p. 44) and the Federal Secretarial Determination of December 24, 1953, 18 Fed. Ref. 8887. Any gain or loss resulting from the sale of the raw sugar at prices above or below the average price during the settlement period is borne by those centrals.

Most purchasing centrals have to sell about 63 per cent of the sugar produced during the first months of the year when the market is lower, "because of the need for cash to make liquidations with colonos, the necessity of maintaining adequate storage space for raw sugar as it is made, and to provide a hedge for prices paid colonos in making cash settlements.[5]

On the other hand, centrals operating on the toll basis only grind the sugarcane for the colonos, retaining as compensation for their services the percentage of the raw sugar manufactured which is allowed by statute. The share of the sugar corresponding to the colono is delivered by these centrals to the former periodically as it is being manufactured, or, in other cases, by voluntary agreement,

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[5] Miller, *The Marketing of Sugarcane in Puerto Rico* (P.M.A. Dept. of Agriculture, November 1950), p. 20. This monograph is Exhibit 15 of the Board, offered at Record App. 115. It was transmitted in its original form to the Court of Appeals.

the central sells the sugar for the colono as his agent and at his own risk and expense.

These two forms of doing business, involving different capital outlays, responsibilities and risks, were sanctioned under the earlier Sugar Acts of Puerto Rico of 1937[6] and 1942[7] both of which, however, regulated the amount of toll to be taken or the price to be paid by the centrals.

Under the present Sugar Act of 1951[8] the Puerto Rican colono is entitled to a minimum share in the sugar produced by his cane, which ranges from 63.5% to 68%, depending on the sugar content of the cane.[9] He is also entitled to a minimum share in the proceeds of the sale of the molasses by-product of the cane on the basis of the formula prescribed in Section 5 of said Act.[10] In addition, the central must compensate him for the hoisting and transportation expenses which he incurs in delivering the cane to the central.[11]

Under said statute the central must grind the cane of all colonos who so demand it, providing it has capacity to do so. However, the colono is under no obligation to grind at a definite central, but is at liberty to shift from one central to another as he deems it more convenient or to his advantage, providing he gives notice to the centrals affected prior to November 1st. before the beginning of the grinding season.[12]

Those colonos receiving their statutory minimum share in sugar can and do sell it to brokers in the local market. There are at least six reputable and substantial brokers in

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[6] Act No. 112, Laws of Puerto Rico, May 13, 1937.
[7] Act No. 221, Laws of Puerto Rico, May 12, 1942.
[8] Act No. 426, Laws of Puerto Rico, May 13, 1951; 5 LPRA, Sec. 371 et seq.
[9] Section 5 (I) ibid; 5 L.P.R.A. sec. 374 (I); Appendix B, page 34.
[10] Section 5 (II) ibid; 5 L.P.R.A. sec. 374 (II); Appendix B, page 35.
[11] Section 6, ibid; 5 L.P.R.A. sec. 375; Appendix B, page 36.
[12] Section 3, ibid; 5 L.P.R.A. sec. 372; Appendix B, page 33.

Puerto Rico.[13] However, as we shall see, the Sugar Board of Puerto Rico, hereinafter designated as the Board, found that small colonos receiving their liquidations in sugar on many occasions were paid by the middlemen prices lower than those paid by centrals under the regulations for liquidations in cash.

The petitioner, Antonio Roig Sucrs. S. en C., owner of Central Roig, engages in the manufacture of raw sugar on the toll basis, retaining as compensation for its services the share in sugar fixed by the statute and delivering the remainder directly to the colono. With the single exception of the year 1952 when it experimented with the plan for liquidating in cash on the basis of the ten-month average New York price then provided in Rule No. 1 of the Board, it has never purchased the cane or the sugar derived therefrom pertaining to the colono, nor does it wish to do so. (R. A. pp. 39; 148).

On July 3, 1952 the Board issued a resolution proposing the adoption of a regulation entitled "Rule No. 2", providing for the liquidation of sugar corresponding to the colonos. (R. A. pp. 5-7).

After notice and hearing, on August 11, 1952 the Board issued Rule No. 2 in substantially the same form it had proposed. Said Rule appears at pages 8-11 of the Record Appendix, and at Appendix C, p. 42 of this petition.

Basically, Rule No. 2 provides that all centrals shall liquidate in cash to its colonos their share in the raw sugar produced by their cane, unless they elect to receive their share in sugar and so notify the central before December 1st prior to the beginning of the grinding season.

Pursuant to the provisions of Section 33 of the Sugar Act of 1951, 5 L.P.R.A. sec. 402, the petitioner filed with

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[13] The record mentions Farr & Co., Lamborn & Co., Minford & Co., Olavarria & Co., Rionda & Co. and Jose Janer. (Record App. 49, 76).

the Board an application for reconsideration, alleging that Rule No. 2 was contrary to Section 7 of the Sugar Act in so far as it imposed upon it the duty of liquidating in cash, purchasing, the colono's share in the sugar produced by his cane; and in the alternative, but for the same reasons, that said Rule and/or Section 7 of the Act deprived it of its liberty and property without due process of law in violation of the local and federal Constitutions. (R.A. pp. 15-17).

After a consolidated hearing on the petitions of all complaining centrals, on January 14, 1953, the Board entered a resolution upholding the validity of Rule No. 2. (R.A. pp. 142-160).

The following are the pertinent findings of fact made by the Board.

> "(1) The Central Roig, owned by Antonio Roig Sucrs., S. en C., liquidated in cash its colonos' share of the proceeds of their cane during the 1952 grinding season, and in sugar during the previous grinding seasons.
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> • • •
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> (5) Out of the 33 Centrals which grinded sugar cane of the colonos during the 1952 grinding season, four of them delivered the sugar pertaining to the Colonos directly to said Colonos, or to persons authorized by the latter; three of them served as agents for the Colonos, delivering to such colonos their liquidations in cash. The remaining centrals, that is, 26 of them, liquidated in cash.
>
> (6) The centrals which, pursuant to the provisions of the Determinations of the Secretary of Agriculture of the United States and of Rule No. 1 of this Board, liquidated in cash on the basis of the average price of the first ten months of the crop-year, and periodically made advance payments in cash under the provisions

of Rule No. 1 aforesaid, pay such advancements out of their own funds or through the sale and/or pignoration of the sugar of the Colonos.

(7) The liquidations in cash, which constitute a satisfactory method that has been in use in the sugar industry for many years, do not impose an onerous economic burden on the dealings or operations of the Central and neither do they add an abnormal risk in the sales of sugar, as the Centrals are subject to the sugar market, a market which by its nature is venturesome.

(8) A Colono who produces 500 tons of sugarcane or less may be considered a small colono. The colonos producing such an amount of sugar cane or less constitute the great majority of the colonos in Puerto Rico and constitute 81% of the total number of Colonos of the Petitioners.

(9) Even though the larger Colonos may satisfactorily market their sugar, the small colonos generally lack the preparation, ability and effective means for marketing theirs, as well as the necessary credit for the pignoration of their sugar and for obtaining other banking facilities. On the contrary, the Centrals have greater facilities and advantages for the marketing and for the pignoration of sugar.

(10) As a consequence of the circumstances stated above, the small colonos who receive their liquidations in sugar on many occasions are forced to approach middlemen for the sale of such sugar at prices lower than those which they would receive were their liquidations made in cash pursuant to the provisions of the Sugar Act and of Rule No. 1 of this Board.

(11) The sales of sugar to middlemen have lead, in certain cases, to anticipated sales to such middlemen of the Colonos' share in the value of the molasses

produced, at prices far lower than those which the Colonos would have received had their molasses been liquidated directly by the Central.

(12) The situation above stated is harmful to the small Colonos constituting the great majority of the colonos in Puerto Rico; it diminishes the income of these small colonos, it benefits the middlemen who are no part of the sugar industry in its agricultural and industrial phases and, consequently, is detrimental to such industry and to the general economy of Puerto Rico.

(13) The Petitioners and the Colonos do not negotiate nor do they argue, except on rare occasions, on the selection of the method of liquidation to be used. On the contrary, the practice of the petitioning Centrals is to designate the method to be used without consulting its colonos. In many cases the Colonos have to grind their sugar cane under the method of liquidation so designated by the Centrals, because their farms are so distant from other centrals that transportation costs of their sugar cane to them would be prohibitive, or because there are no means of transportation to such other centrals.

At said hearing, the petitioner presented evidence to show, among other things, that in the year 1952 when it tried for the first and only time the plan of paying colonos for their sugar on the basis of the ten-month average then required by the Board under its Rule No. 1, it had to maintain a bank credit up to $895,592.21 to handle the provisional liquidations, and pay the bank 3.5% interest on the funds borrowed for such purposes. (R.A. pp. 39-40; 43; 130-132).

On January 29, 1953 the petitioner jointly with two other centrals filed with the Supreme Court of Puerto Rico a

petition for review of the aforementioned resolution of the Board, attacking the validity of Rule No. 2 and/or Section 7 of the Sugar Act on the same grounds asserted in its application to the Board for reconsideration. (R.A. pp. 178-181).

On November 5, 1954 the Supreme Court of Puerto Rico entered judgment affirming the resolution of the Board (R.A. p. 200) on the basis of its opinion delivered on that same date in the companion case of *Eastern Sugar Associates* v. *Sugar Board,* Review No. 3 (R.A. pp. 182-198). The Court construed Section 7 of the Act as requiring all centrals, regardless of their previous practice, to liquidate with the colonos in cash, except as to those colonos who gave the central notice within the time fixed by the Act of their desire to have their cane ground on the toll basis. It briefly disposed of the constitutional validity of said Section as interpreted, saying (R.A. pp. 189-190):

> "In enacting Section 7 the Legislative Assembly may well have shared the view expressed by the Board in this case that liquidation in cash is beneficial for the industry as a whole because the centrals have more facilities and other advantages to market and sell sugar than the individual colonos, particularly the small colonos, who lack the background, skill, credit and other requirements for the sale of sugar; that small colonos who liquidate in sugar obtain inferior prices therefore than would they receive in money under Section 7 and Rule No. 2; that, generally speaking, liquidation in cash has been a satisfactory method in use here for years; and that if a colono possesses satisfactory means to market sugar and wishes to do so he should be permitted to liquidate in sugar. Cf. Miller—The Marketing of Sugar Cane in Puerto Rico, pp. 28-31, 43 described hereinafter in footnote 15. It may

well be that substantial expenses will result for the seven of the thirty-three mills in Puerto Rico which have in the past liquidated in sugar rather than in money if a considerable number of their colonos elect to receive money. But in the absence of a showing that this additional cost to the mills will result in a confiscatory participation for the Associates under Act No. 426 as a whole, we cannot find that the provisions in Section 7 that colonos shall receive cash unless they elect to liquidate in sugar, under the circumstances of the sugar industry in Puerto Rico, is invalid".

On appeal to the Court of Appeals, the only question raised by the petitioner was the constitutional validity of Section 7 of the Act as construed by the Supreme Court of Puerto Rico. On July 17, 1956 the Court of Appeals entered judgment affirming the judgment of the Supreme Court.

Reasons for Allowance of Writ

This case not only raises an important question of federal constitutional law in the field of governmental regulation of business, but it has also been decided in a way in conflict with applicable decisions of this Court.

This Court has never upheld legislation, even in the field of public utilities, which compels a business enterprise to purchase property of other persons which it has never undertaken to buy.

The Court of Appeals admits that the Sugar Act of 1951 "forces the centrals affected to buy colonos cane and market the sugar derived therefrom with their own". (Appendix A, page 28). As justification three reasons are asserted: (1) that the majority of the centrals in Puerto Rico have voluntarily and satisfactorily adopted the prac-

tice of purchasing the colonos' share in the sugar derived from their cane; (2) that the central is in a better position market-wise than the colono, particularly the small one, to market the sugar; and (3) that the small colono, lacking preparation, ability and effective means for marketing his sugar, when he receives his share in sugar, on many occasions he is forced to approach middlemen or brokers for the sale of his sugar at prices lower than those which centrals have to pay under the Board's regulations providing for liquidations in cash.

The petitioner's business of grinding cane on the toll basis or its consequential liquidations in sugar are not found to be harmful or prejudicial to the industry or to the colonos. In fact the Board found that liquidations in sugar were satisfactory and beneficial to large colonos. (Finding 9, R.A. p. 150; see also Jimenez, R.A. pp. 99-100). The statute still continues to permit processors to operate on the toll basis, that is, to make liquidations in sugar, if the individual colono, whether large or small, so desires and timely demands it. It is up to the individual colono's fancy, whim or caprice whether he is to receive his share in sugar or whether he wishes to compel the central to purchase it.[14] The Supreme Court of Puerto Rico admits, however, that "it may well be that substantial expenses will result for the seven of the thirty three mills in Puerto Rico which have in the past liquidated in sugar rather than in money, if a considerable number of colonos elect to receive money". (R.A. p. 190).

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[14] In this setting, we submit that the statute does not pursue an end which is in fact public, and that it constitutes an illegal exercise of the police power for the mere convenience of small colonos. Cf. *Chicago St. P. M. & O. R. Co.* v. *Holmberg*, 282 U.S. 162 (1930); *Great Northern R. Co.* v. *Cahill*, 253 U.S. 71 (1920); *Great Northern Ry. Co.* v. *Minn.*, 238 U.S. 340 (1915); *Missouri Pac. Ry. Co.* v. *Nebraska*, 217 U.S. 196 (1910); *Missouri P. R. Co.* v. *Nebraska ex rel Board of Transpt.*, 164 U.S. 403 (1896).

To say that the statute is requiring all centrals to conform to the practice voluntarily adopted by the majority of centrals of purchasing the sugar of colonos, begs the question whether it is consistent with the due process clause of the Federal Constitution to compel a minority to abandon harmless business practices for more onerous and venturesome ones simply because the latter happen to be the practices which the majority have found satisfactory. Is this not management rather than regulation of private property?

To justify the imposition on centrals of the obligation to purchase the sugar of colonos on the grounds that third parties, i.e., middlemen, are on occasions exploiting the small colonos is to sanction the doctrine that the end justifies the means, and thereby to undermine the very foundations of a meaningful concept of due process of law.[15]

In *Thompson* v. *Consolidated Gas Utilities Corp.*, 300 U.S. 55 (1937) this Court, speaking through Justice Brandeis, unanimously condemned legislation very similar in its purpose to that of the statute herein challenged. That case involved a gas proration order issued by the Railroad Commission of Texas, limiting the production of gas in certain fields for the alleged purpose of preventing waste and protecting the correlative rights of producers in those fields. Upon examination of the facts surrounding the order, it was found that the production of the wells of producers who owned pipeline facilities with which to market their goods was limited beyond what was reasonably necessary for the prevention of waste or the protec-

[15] Needless to say Puerto Rico has ample power to regulate the prices to be paid by brokers or middlemen for the sugar of colonos. *Mayo* v. *Lakelands Highlands Can Co.*, 309 U.S. 310 (1940); *Hegeman Farms Corp.* v. *Baldwin*, 293 U.S. 163 (1934). It has in fact provided for the regulation of such prices in the Insular Supplies Act of 1942, Act No. 228 of May 12, 1942, 23 L.P.R.A. sec. 731 et seq. See *Mora* v. *Mejias*, 206 F(2) 377 (1953).

tion of the reserves of producers without pipeline facilities; and that the real purpose and effect of the order in so limiting production was to compel or induce pipeline producers to purchase the gas of non-pipeline producers in order to be able to meet their marketing requirements under existing contracts, and to thus provide the non-pipeline producers with a market for their gas. This Court held that the case presented "no more glaring instance of the taking of one man's property and giving it to another". Compare *Railroad Comm.* v. *Rowan and Nichols Oil Co.*, 310 U.S. 573 (1940). See *Republic Nat. Gas Co.* v. *Oklahoma*, 334 U.S. 62, 73 (1948).

The Court of Appeals attempts to distinguish the *Thompson* case on the grounds that in the present case the statute seeks to benefit the colonos who constitute "a large and important group whose economic welfare can well have been considered by the legislature not only important to themselves but also important to the economic health of the island as a whole", (Appendix A, page 26); whereas in the *Thompson* case the order limiting production of gas was found to serve "only the private purpose of aiding the gas well owners in a given area who lacked an outlet to market for their gas at the expense of other well owners in the area who have provided themselves with an outlet". (Appendix A, page 27). We respectfully submit that the distinction made is artificial. Obviously both regulations had the same purpose, namely, to provide a group of producers with forced purchasers of their product, although said purpose was disguised and sought indirectly in the *Thompson* case. What the distinction really amounts to is the assumption that the colonos of Puerto Rico are more important to the insular economy than the gas producers of Texas to the economy of that State —a distinction of hardly any juridical significance, even if it were to be accepted.

The case at bar is even stronger than the *Thompson* case since it does not present the special circumstances existing in the oil and gas industry where common pools of a fugacious mineral are shared by several producers some of whom lacked an outlet to the market and consequently could eventually lose their reserves to those adjoining producers who could market the oil and therefore were in a position to drain it away. However, the colono is not at the mercy of the central with respect to his share in the sugar produced from his cane. The central operating on the toll basis must and does deliver to him the fair and reasonable share fixed by statute. The colono can and does sell his sugar through middlemen or brokers, customary avenues to the ultimate market. It is only after his relations with the central have ended that he encounters difficulties, not because he lacks an outlet to the market but because on occasions in bargaining with the middlemen he is unable to command a reasonable sales price for his sugar.

The decision of the lower court is also contrary to consistent holdings of this Court to the effect that it is beyond the police power of a State, regardless of the compensation provided, to compel a person to engage in a business against his will [16] or to render services which are not related with his undertaking.[17]

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[16] *Frost* v. *Railroad Comm.*, 271 U.S. 583 (1926); *Michigan Public Utilities Comm.* v. *Duke*, 266 U.S. 570 (1925); *Producers Transpt. Co.* v. *Railroad Comm.*, 251 U.S. 228 (1920); all of which involved legislation compelling private carriers to conduct their businesses as public carriers. Compare *Rivera* v. *R. Cobian Chinea & Co.*, (C.C.A. 1st.) 181 F(2) 974 (1950) with *Bowles* v. *Willingham*, 321 U.S. 503, 517 (1944); *Yakus* v. *U. S.*, 321 U.S. 414, 437 (1944); and *Wilson* v. *Brown*, (Em. Ct. App.) 137 F(2) 348, 352 (1943).

[17] *Great Northern R. Co.* v. *Cahill*, 253 U.S. 71 (1920); *Great Northern R. Co.* v. *Minnesota*, 238 U.S. 340 (1915); *Chicago St. P. M. & O. R. Co.* v. *Holmberg*, 282 U.S. 162 (1930).

The lower court claims that Section 7 of the Sugar Act of 1951 does not force the petitioner to embark on any new enterprise, but rather "extends the scope of the business", because the petitioner has always been a processor of cane and a marketer of sugar. However, the inescapable fact is that the petitioner does not engage in the purchase of sugar, nor is that an incident of its principal business as processor of cane, nor as marketer of the sugar which it retains as compensation for its services. In forcing it to purchase the sugar of the colonos, the statute is compelling it to alter its business, for what distinguishes its business as processor of cane on the toll basis is precisely the fact that it does not engage in the purchase of the cane or the sugar of the colono.

In short, we may say in answer, as this Court said in *Northern Pac. Ry.* v. *North Dakota*, 236 U.S. 585, 595 (1915):

> "But broad as is the power of regulation, the State does not enjoy the freedom of an owner. The fact that the property is devoted to a public use on certain terms does not justify the requirement that it shall be devoted to other public purposes, or to the same use on other terms, or the imposition of restriction that are not reasonably concerned with the proper conduct of the business according to the undertaking which the carrier has expressly or impliedly assumed. If it has held itself out as a carrier of passenger only, it cannot be compelled to carry freight. As a carrier for hire, it cannot be required to carry persons or goods gratuitously. The case would not be altered by the assertion that the public interest demanded such carriage. The public interest cannot be invoked as a justification for demands which pass the limits of reasonable protection and seek to impose upon the carrier

and its property burdens that are not incident to its engagement. . . ."

Almost all of the cases cited by the Court of Appeals in its opinion involve price regulations.[18] It is not difficult to note the substantial distinction between this sort of regulation and the one involved in the present case. Price regulations merely fix the price of voluntary contracted services or transactions. Section 7 of the Puerto Rican Sugar Act is twofold in character. It not only fixes the minimum prices to be paid by centrals for sugar purchased from colonos but what is more significant it also compels the central to purchase said sugar.

The cases of *Knoxville Iron Co.* v. *Harbinson*, 183 U.S. 13 (1901) and *Dayton Coal & Iron Co.* v. *Barton*, 183 U.S. 23 (1901) also cited by the lower court, are readily distinguishable. In those cases the statute compelled employers to pay its employees for their services in cash instead of in kind. In the present case, the petitioner is the one who performs the services by grinding the cane for the colono. It is the one who gets paid by the colono in kind, and not *vice versa*.

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[18] *West Coast Hotel Co.* v. *Parrish*, 300 U.S. 379 (1937) (Wages); *Nebbia* v. *New York*, 291 U.S. 502 (1934) (purchase price of milk); *O'Gorman & Young Inc.* v. *Hartford Fire Ins. Co.*, 282 U.S. 251 (1931) (insurance commissions); *German Alliance Ins. Co.* v. *Lewis*, 233 U.S. 389 (1914) (insurance premiums); *Griffith* v. *Connecticut*, 218 U.S. 563 (1910) (interest on loans); *Holden* v. *Hardy*, 169 U.S. 366 (1898) (wages).

Conclusion

For the reasons hereinbefore stated, it is respectfully submitted that this petition for writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit should be granted.

Respectfully submitted,

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Appendix A.

United States Court of Appeals
For the First Circuit

No. 4959.

ANTONIO ROIG SUCRS. S. EN C., ET AL.,
PETITIONERS, APPELLANTS,
v.
THE SUGAR BOARD OF PUERTO RICO,
DEFENDANT, APPELLEE.

No. 4960.

EASTERN SUGAR ASSOCIATES
(a Trust),
PETITIONERS, APPELLANTS,
v.
SAME.

No. 4972.

EASTERN SUGAR ASSOCIATES
(a Trust),
v.
COLONOS DE CANA DE SANTA JUANA, INC.,
ET AL.,
APPELLEES.

APPEALS FROM JUDGMENTS OF THE
SUPREME COURT OF PUERTO RICO.

Before MAGRUDER, *Chief Judge,* and MARIS and WOODBURY, *Circuit Judges.*

Francisco Castro-Amy, with whom *James R. Beverley* and *R. Castro-Fernandez* were on brief, for Antonio Roig Sucrs. S. en C. et al., appellants.

E. T. Fiddler, with whom *Jose G. Gonzalez*, *Tomas I. Nido* and *Carlos J. Faure* were on brief, for Eastern Sugar Associates (A Trust), appellee.

Abe Fortas, Special Assistant Attorney General of Puerto Rico, with whom *Jose Trias Monge*, Attorney General of Puerto Rico, and *Arnold, Fortas & Porter* were on brief, for The Sugar Board of Puerto Rico, appellant.

Colonos de Cana de Santa Juana, Inc., appellee, submitted on brief of The Sugar Board of Puerto Rico by leave of Court.

OPINION OF THE COURT.

July 17, 1956.

WOODBURY, *Circuit Judge*. These appeals under Title 28 U.S.C. § 1293 from final decisions of the Supreme Court of Puerto Rico present questions of the validity under the Constitution of the United States of certain provisions of the Sugar Act of Puerto Rico, Act No. 426 of May 13, 1951; Laws of Puerto Rico, 1951, page 1138. In addition Eastern Sugar Associates in its appeal No. 4960 alleges error in that the Supreme Court of Puerto Rico deprived it of a forum in which to defend its constitutional rights.

The sugar problem of Puerto Rico is an old, obstinate, and difficult one. And its solution is of vital importance for we may take judicial notice of the well known fact that the economy of the Island rests in major part upon the growing of sugar cane and the processing of the cane into raw sugar. Moreover, the growing of the cane and its grinding are closely related enterprises for the reason that while the cane is grown in large part by independent farmers called colonos, a great many of whom have only small holdings, it is also grown by the processors themselves, usually on large holdings; and furthermore, since cane is heavy and bulky and must be ground within twenty-four hours after it is cut, the colonos are per force depend-

ent upon the services of some nearby mill or central, each one of which represents a substantial capital investment.

The Sugar Act of Puerto Rico, *supra,* is the third of a series of statutes enacted by the local legislature since 1937 for the purpose of providing a comprehensive scheme for the regulation of the sugar industry in both its agricultural and its industrial aspects. The appellants do not challenge the power of the insular legislature either to enact such statutes or to include therein provisions regulating the compensation which the colonos are entitled to receive for their cane from the centrals. Indeed, the legislative power in the premises could not successfully be attacked in view of the decisions of this court in *Vidal* v. *Fernandez,* 104 F.2d 606 (1939) and *Roig* v. *People of Puerto Rico,* 147 F.2d 87 (1945). The appellants here challenge only certain features of the 1951 statutory scheme for compensating the colonos for their cane.

The appellants in the first two appeals, Nos. 4959 and 4960, question the constitutional validity of § 7 of the Sugar Act of Puerto Rico as interpreted by the Sugar Board created by the Act in its Rule 2 and by the Supreme Court of Puerto Rico. We shall consider first the contentions of these appellants and then pass on to consideration of the contention of the appellant in the third appeal.

Historically the centrals in Puerto Rico have either purchased cane from the colonos at a price per ton calculated on the sugar content of the cane or have ground cane for the colonos on the toll basis, the amount of toll also calculated on the sugar content of the cane. The earlier insular sugar acts of 1937 and 1942 sanctioned both of these alternative methods of compensating the colonos but regulated the amount of toll to be taken or the price to be paid by the centrals. However, at least in later years, payment in cash became the usual method of compensation. The Sugar Board found and it is not disputed that during the 1952

grinding season, 26 (one on an experimental basis for that year only) of the 33 centrals grinding colonos' cane [1] paid for it in cash, and of the 7 remaining centrals operating on the toll basis, 4, all Eastern's, delivered the colonos' share of the sugar derived from their cane directly to them, or to some person authorized to receive it for them, and 3 under agency agreements sold the colonos' share of the sugar with their own and settled with the colonos for cash. The Supreme Court of Puerto Rico held that the Sugar Board in its Rule 2 correctly construed § 7 of the Sugar Act as altering this historic pattern of dealing between centrals and colonos by requiring all centrals, regardless of their previous practice, to liquidate with the colonos in cash except as to those colonos who gave the central notice within a period of time fixed by the Act of their desire to have their cane ground on the toll basis. The appellants contend that this statutory requirement that the centrals operate on the cash basis unless the colonos elect otherwise deprives them, the centrals, of their property and of their freedom of contract without due process of law in violation of either the Fifth or the Fourteenth Amendment of the federal Constitution.[2]

We take our text from the opinion of the Supreme Court of the United States in *Nebbia* v. *New York*, 291 U.S. 502 (1934) wherein the Court enunciated the general principles governing cases of this sort. It is said by way of introduction on pages 523 and 524:

> "Under our form of government the use of property and the making of contracts are normally matters

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[1] One additional central ground only its own or, as it is called, "administration" cane.

[2] The requirements of "due process" in the present situation as will presently appear are the same under either amendment so once again we need not decide which amendment to apply. See *Mora* v. *Mejías*, 206 F.2d 377, 382 (C.A. 1, 1953) and *id.* 223 F.2d 814, 816 (C.A. 1, 1955).

of private and not public concern. The general rule is that both shall be free of governmental interference. But neither property rights nor contract rights are absolute; for government cannot exist if the citizen may at will use his property to the detriment of his fellows, or exercise his freedom of contract to work them harm. Equally fundamental with the private right is that of the public to regulate it in the common interest. . . .

* * *

". . . These correlative rights, that of the citizen to exercise exclusive dominion over property and freely to contract about his affairs, and that of the state to regulate the use of property and the conduct of business, are always in collision. No exercise of the private right can be imagined which will not in some respect, however slight, affect the public; no exercise of the legislative prerogative to regulate the conduct of the citizen which will not to some extent abridge his liberty or affect his property. But subject only to constitutional restraint the private right must yield to the public need."

And on page 525, the Court marked the bounds of constitutional restraint under the due process clauses. It said:

"The Fifth Amendment, in the field of federal activity, and the Fourteenth, as respects state action, do not prohibit governmental regulation for the public welfare. They merely condition the exertion of the admitted power, by securing that the end shall be accomplished by methods consistent with due process. And the guarantee of due process, as has often been held, demands only that the law shall not be unreasonable, arbitrary or capricious, and that the means selected shall have a real and substantial relation to the object sought to be attained. . . ."

Then, on page 537, the Court stated the function of the courts in the premises by saying:

> "So far as the requirement of due process is concerned, and in the absence of other constitutional restriction, a state is free to adopt whatever economic policy may reasonably be deemed to promote public welfare, and to enforce that policy by legislation adapted to its purpose. The courts are without authority either to declare such policy, or, when it is declared by the legislature, to override it. If the laws passed are seen to have a reasonable relation to a proper legislative purpose, and are neither arbitrary nor discriminatory, the requirements of due process are satisfied, and judicial determination to that effect renders a court *functus officio.*"

We do not understand any of the appellants to quarrel in the least with these general propositions. The attack of the appellants in the first two appeals upon § 7 of the statute as interpreted by the Sugar Board and the Supreme Court of Puerto Rico, is essentially two-pronged. They say that the only conceivable purpose of § 7 of the Act as construed is to improve the economic position of a single group in the community, the colonos, and hence cannot be said to serve a "public purpose," and that the statute, because it forces the centrals to "enter a new business," *i.e.* the purchase of cane from the colonos, is necessarily arbitrary, capricious, and unreasonable. We find no merit in either contention.

Certainly § 7 by requiring the centrals to pay in cash unless the colono otherwise elects deprives the centrals of their power unilaterally to decide whether they will grind colonos cane on the toll basis or purchase it—whether they will pay the colonos in kind or in cash. And no doubt the effect of this limitation on the central's freedom of contract was intended to and does redound primarily to the

economic benefit of the colonos. Furthermore, we may assume that the purpose of the enactment was to strike an economic balance between groups with conflicting interests by improving the economic lot of the diffuse and, from the bargaining standpoint, weaker group, the colonos, at the expense of the relatively more compact and contractually stronger group, the centrals. But it does not necessarily follow from these considerations that the section violates the requirements of due process.

We have already shown by our first quotation from *Nebbia* v. *New York* that although the use of property and the making of contracts are normally matters of private right, both may be regulated in the public interest. And it was held long ago that such regulation may take the form of requiring payment in cash instead of payment in kind. *Knoxville Iron Co.* v. *Harbison*, 183 U.S. 13 (1901); *Dayton Coal & Iron Co.* v. *Barton*, 183 U.S. 23 (1901). In those cases to be sure the Court was dealing with employment contracts but that is a distinction without any difference in applicable principle. Furthermore, legislation designed to benefit one group in the community at the expense of another has been repeatedly sustained as in the public interest and hence not vulnerable for that reason alone to attack on due process grounds. See *Holden* v. *Hardy*, 169 U.S. 366 (1898). For instance, legislation benefiting borrowers of money at the expense of lenders was sustained in *Griffith* v. *Connecticut*, 218 U.S. 563 (1910); legislation regulating fire insurance premiums for the benefit of policyholders contrary to the economic interest of the insurers was sustained in *German Alliance Ins. Co.* v. *Lewis*, 233 U.S. 389 (1914), and legislation regulating the compensation of insurance agents was sustained in *O'Gorman & Young, Inc.* v. *Hartford Fire Ins. Co.*, 282 U.S. 251 (1931). Even more clearly in point is *Nebbia* v. *New York*, supra, wherein legislation for the primary benefit of dairy farm-

ers and milk consumers was sustained even though it imposed substantial burdens upon processors and middlemen. Nor is the statute vulnerable to attack because the legislature in enacting it may well have taken the relatively weak bargaining power of the colonos into consideration. The relative bargaining weakness of the group to be benefited is a factor which a legislature is entitled to consider in enacting a statute. *West Coast Hotel Co.* v. *Parrish*, 300 U.S. 379, 398 (1937).

The whole question on this phase of due process is whether it can be found that the means selected by the legislature have a real and substantial relation to some public purpose as distinguished from a merely private one.[3] The answer is not far to seek, for, as already pointed out, the colonos are a large and important group whose economic welfare can well have been considered by the legislature as not only important to themselves but also important to the economic health of the island as a whole. Indeed, this is not the first time the legislature of Puerto Rico has taken steps for their particular benefit. See the earlier sugar acts of 1937 and 1942 considered by this court in the *Vidal* and *Roig* cases cited early in this opinion. Certainly their economic well-being is as important to the economy of Puerto Rico as the particular groups singled out for protection in the state legislation held valid in the *Griffith* and other cases cited above; the colonos are not less important to the insular economy than are the dairy farmers of New York to the economy of their state.

Herein lies the distinction between this case and *Thompson* v. *Consolidated Gas Co.*, 300 U.S. 55 (1937) upon which

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[3] These appellants do not contend that the legislative means selected do not have a real and substantial relation to the economic welfare of the colonos. Their argument is that the means selected serve only the colonos' ends which they say makes the statutory purpose private instead of public.

the appellants heavily rely. For in that case the Court was unable to discover that the means selected in the regulation there under attack bore any real and substantial relation to a public purpose to conserve the state's supply of natural gas, but instead was forced to find that the means selected served only the private purpose of aiding gas well owners in a given area who lacked an outlet to market for their gas at the expense of other well owners in the area who had provided themselves with an outlet. It found that the means selected, transportation of gas from the wells of those who did not own pipe lines by the well owners who had pipe lines, served no public purpose to conserve the state's supply of gas but served only the private purposes of the well owners without pipe lines.

This brings us to the other phase of due process, for even though a statute may serve a public purpose, to comply with due process requirements it must serve that purpose in a way which is not arbitrary, capricious, or unreasonable.

The appellant's position is that § 7 of the Sugar Act of Puerto Rico, as construed, offends this phase of due process, *i.e.* is arbitrary, capricious, and unreasonable, because it forces the centrals to "engage in a new business," that is to say, the business of buying cane from the colonos and therefore necessarily marketing the sugar derived therefrom with the sugar derived from the central's own cane. This argument applies with particular force to Eastern's four centrals which have never purchased cane from the colonos or undertaken to market the colonos' share of the raw sugar derived from their cane. But we cannot see that even these centrals are forced to embark upon a new business. They have always ground their own administration cane and also that of colonos in the neighborhood, and, of course, they have also always sold the sugar from their own cane and the sugar taken as toll for grinding the

colonos' cane. They have been processors of cane and marketers of sugar in the past and they remain so in the future. Section 7 of the Act does not require them to embark on any new enterprise. It regulates the centrals' contractual relationship with the colonos by requiring all centrals to conform to the practice voluntarily adopted by three-quarters of the centrals in Puerto Rico. This forces the centrals affected to buy colonos cane and market the sugar derived therefrom with their own, no doubt for the reason that the legislature thought the centrals to be in a better position market-wise than the colonos, particularly the smaller ones. This extends the scope of the business of the affected centrals but it does not force them into a kind of business they have never done before.

Now we come to the contention advanced by Eastern Sugar Associates alone in its appeal No. 4960, *i.e.* the contention that the Supreme Court of Puerto Rico fell into clear error by depriving Eastern of a forum in which to defend its constitutional rights.

This contention rests upon the refusal of the Supreme Court of Puerto Rico to examine the record in order to decide whether at a public hearing held by the Sugar Board any substantial evidence had been introduced to support the findings of fact made by the Board on the basis of which it rested the legal conclusion embodied in its Rule 2; that is to say its conclusion that § 7 of the Sugar Act, properly construed, required the centrals to pay the colonos in cash unless they elected otherwise. The Supreme Court of Puerto Rico based its refusal to review the Sugar Board's findings of fact on the ground that its Rule 2 was general in scope and legislative in character and therefore could have been promulgated by the Board without any hearing at all provided at some point persons affected by the Rule were afforded an opportunity to challenge it judicially. And the court pointed out that under § 15 of the Act, had

Eastern chosen to invoke its provisions, Eastern could have filed a complaint with the Sugar Board alleging that Rule 2 was invalid as applied to it, that on such a complaint the Board was required to hold a quasi-judicial hearing at which Eastern could introduce evidence of the financial impact of the Rule upon it, and that after such a hearing the Board would have to make findings of fact which would be subject to judicial review.

Eastern agrees that the Sugar Board's Rule 2 is general in scope and legislative in character. Conceding that much we fail to see how it can be said that the action taken by the Supreme Court of Puerto Rico in the premises does violence to the rule of *Bowles* v. *Willingham*, 321 U.S. 503, 519, 521 (1944) upon which it relied. Nevertheless Eastern, in spite of its concessions, strenuously contends that the action of the Supreme Court of Puerto Rico deprived it of a forum in which to defend its constitutional rights.

Eastern's argument is not easy to understand or to follow. It seems to rest, however, upon the premise that in some way it was incumbent on the Sugar Board, before it construed § 7 of the Act as it did, to hold a public hearing, introduce positive evidence thereat which persons affected were given an opportunity to counter or refute, and make findings resting upon that evidence, to establish that as it construed the section it was neither arbitrary, capricious, nor unreasonable and also served a proper public purpose, and furthermore that the Supreme Court of Puerto Rico erred in affirming the Sugar Board's construction of the section in the absence of such findings. Several errors in Eastern's premise are obvious. It will suffice only to say that it is up to the person attacking the validity of a general administrative regulation or a statute to come forward with the facts on which he bases his assertion of unconstitutionality. Eastern, as we have seen, had an opportunity

to make such an attack by invoking the procedures provided in § 15 of the Act. It failed to take advantage of the opportunity afforded. Wherefore a presumption of validity attaches to both Rule 2 and the Act itself. For in *Thompson* v. *Consolidated Gas Co.*, 300 U.S. 55, 69 (1937) it is said to be settled that "to all administrative regulations purporting to be made under authority legally delegated, there attaches a presumption of the existence of facts justifying the specific exercise." And in *United States* v. *Carolene Products Co.*, 304 U.S. 144, 152 (1938) it is said that even in the absence of a statement of the legislative purpose for enacting an economic regulation "the existence of facts supporting the legislative judgment is to be presumed, for regulatory legislation affecting ordinary commercial transactions is not to be pronounced unconstitutional unless in the light of facts made known or generally assumed it is of such a character as to preclude the assumption that it rests upon some rational basis within the knowledge and experience of the legislators."

We turn now to the third appeal in this trilogy.

On this one we are concerned with another section of the Sugar Act of Puerto Rico, § 6, which regulates in detail the allocation between the centrals and the colonos of the expenses, and the furnishing of services, incident to hauling, loading, and transporting the colonos' cane after it is cut in the field and until it is delivered to the central. The section is long and rather involved. A brief summary of its salient provisions will suffice.

It provides in its subsection (a) that when the central undertakes to transport cane direct from the colono's farm, it must pay the colono 7½ cents per ton for moving the cane from the place on the farm where it is cut to the place on the farm where the central picks the cane up. It provides in its subsection (b) that when the colono transports his cane to the central with his own equipment, or with

equipment which he leases, the central must pay the colono 15 cents per ton plus 5 cents per ton per kilometer. In its subsection (c) the section provides that when the central has in the past provided the colono with portable tracks and rolling stock to be used for hauling the cane directly from the farm, it must continue to do so and in addition pay the colono 5 cents per ton for carrying the cane across the field to the track. And its subsection (d), as construed by the Sugar Board, requires that when the central takes delivery of cane at a siding off a colono's farm where it also takes delivery of the cane of other colonos, the central must provide hoisting equipment to load the cane onto its cars and men to operate that equipment. In a general sort of way these provisions require the centrals to purchase the colonos' cane F.A.C. (free after cutting) to coin a phrase. And the Supreme Court of Puerto Rico in a companion case decided at the same time as the one appealed from (*Antonio Roig, Sucrs.* v. *Sugar Board,* not yet reported in English) said that in so doing the section "followed the customs and historical pattern of the sugar industry in Puerto Rico."

The present appellant does not challenge the constitutional validity of all the requirements of the section. Its attack is concentrated on the provisions of subsections (a) and (c), that is, the requirement that the centrals pay the colonos 7½ cents per ton for hauling the cane to an on-farm delivery point, and the requirement that the centrals provide hoisting equipment and men to operate it at off-farm common delivery points. It says that these two requirements deprive the centrals of their property without due process of law in violation of the Fifth and Fourteenth Amendments of the Constitution of the United States.

Eastern's constitutional argument on this appeal, and it makes no other, is basically the same as its constitutional argument on appeal No. 4960 which we have already con-

sidered and rejected. Repetition would be pointless. It will suffice to say that Eastern's argument treats the two subsections of § 6 of which it complains as though they were isolated instances of price regulation, whereas in fact, as the Supreme Court of Puerto Rico pointed out in the *Antonio Roig* case cited above, the subsections complained of are, with the other provisions of § 6, and in addition § 7, and also § 5 with which we are not concerned, but integral parts of a comprehensive statute designated to regulate the compensation of the colonos on an over-all basis.

The general purpose served by the statute as a whole is a public one, as we have already pointed out. The specific purpose of the provisions of § 6 is generally to require the centrals to purchase cane from the colonos at what we have called F.A.C. or free after cutting. Thus, by hypothesis, the work done on the cane by the colonos after cutting is done for the central, and the provisions of § 6 fix the colonos' compensation for that work. Since the means selected for fixing the colonos' compensation for that work bear a real and substantial relation to the object sought to be attained we find no constitutional infirmity in the section.

The judgments of the Supreme Court of Puerto Rico are affirmed.

Appendix B.

THE SUGAR ACT OF PUERTO RICO
ACT NO. 426, APPROVED MAY 13, 1951.

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Section 3. No sugar central shall refuse to grind the cane of a colono or of his successors or successors in interest, who may have been a colono of said central during any of the three (3) years prior to the date on which he may offer said cane to be ground, and the central shall give preference to said colonos for grinding their cane over the new colonos; Provided, That in such cases where a colono shall have been a colono for two or more centrals, the central shall be bound to grind the proportional part of the crop which said colono delivered to said central to be ground during the last year in which he was a colono thereof.

For a colono to be entitled to shift from the central where he grinds his canes to another central, he shall be under obligation to notify the centrals concerned of his intention to make said change not later than the first day of November prior to the grinding season in which he desires to make such change.

The central shall be bound to grind the cane of the new colonos, unless the Board exempts the central from such obligation after it is shown to the Board that the central lacks sufficient capacity to assume the grinding of the cane from such colonos.

* * *

Section 5. In all cases where a colono delivers his cane to a central for the manufacture of sugar, the share belonging to each colono of the sugar and molasses produced from his cane shall be fixed in the manner hereinafter pro-

vided; It being understood, That the share fixed in this section for the colonos, of the sugar and molasses produced from his cane, shall be the minimum share that said colonos shall receive; Provided, that the Board is hereby empowered, after a hearing which may be held on petition of a party or motu proprio, to fix a different share for the colonos if, in its judgment, such an increase in said minimum share is justified.

1. Sugar

A. The share of sugar pertaining to the colono shall be determined on the basis of the exact average of the content of the colono's cane ground during the fortnight or month covered by the liquidation, as hereinafter provided:

(a) On cane with a yield of 9.5 per cent or less than 9.5 per cent of sugar of 96° of polarization, the colono's share shall be 63.5 per cent of the aggregate sugar production, as shown in the table appearing after subdivision (b) herein below:

(b) On cane with a yield higher than 9.5 per cent of sugar of 96° of polarization, the colono's share shall be increased as follows:

For each one-tenth of one per cent of yield in excess of 9.5 per cent, there shall be added one-tenth (0.1) to 63.5 per cent, and the aggregate sum thus obtained shall be the percentage pertaining to the colono of the aggregate sugar production, as stated in the table inserted below; Provided, That on cane with a yield higher than 14 per cent of sugar of 96° of polarization, the colono's share shall be 68.0 per cent of the aggregate sugar production.

TABLE FOR THE LIQUIDATION OF SUGAR TO COLONOS

Content	Colono's Share	Content	Colono's Share	Content	Colono's Share
		11.0	65.0	12.6	66.6
9.5 or less	63.5	11.1	65.1	12.7	66.7
9.6	63.6	11.2	65.2	12.8	66.8
9.7	63.7	11.3	65.3	12.9	66.9
9.8	63.8	11.4	65.4	13.0	67.0
9.9	63.9	11.5	65.5	13.1	67.1
10.0	64.0	11.6	65.6	13.2	67.2
10.1	64.1	11.7	65.7	13.3	67.3
10.2	64.2	11.8	65.8	13.4	67.4
10.3	64.3	11.9	65.9	13.5	67.5
10.4	64.4	12.0	66.0	13.6	67.6
10.5	64.5	12.1	66.1	13.7	67.7
10.6	64.6	12.2	66.2	13.8	67.8
10.7	64.7	12.3	66.3	13.9	67.9
10.8	64.8	12.4	66.4	14.0 or more	68.0
10.9	64.9	12.5	66.5		

II. Blackstrap Molasses

After the sugar season is over, and within the term fixed by the Board, the centrals shall be bound to liquidate to the colonos their share of the value of the molasses produced, as follows:

(a) For each ton of cane delivered by a colono, the central shall pay to the colono a sum equal to the amount resulting from the multiplication of (1) 66 per cent of the net revenues per gallon of blackstrap molasses produced during the grinding season in excess of five (5) cents per gallon, by (2) the average number of gallons of blackstrap molasses per ton of cane produced by the central during the grinding season.

(b) The Board shall examine the sales of molasses of each central during the year, and if, as a result of such examination, the Board shall determine that any central has not sold its molasses as a result of the supply and demand in the open market but, on the contrary, has sold said molasses in such manner or to such entities or persons, that said sale has resulted unfairly prejudicial to the colonos, the Board is hereby empowered to determine the average price on the molasses market, taking into consideration the sales made by all the centrals of Puerto Rico in the local market and in the New York market, and on the basis of such average price, the central shall be bound to liquidate the colono's share of said molasses.

(c) The Board shall have power to determine, in all cases, whether the expenses deducted upon computing the net revenues to which reference is made in subdivision II (a) of this section have been actually incurred and are fair and reasonable.

(d) If the Board or any colono does not agree to the fairness or correctness of the expenses deducted by the central upon computing the net revenues from the molasses sold, or deems that said expenses, or any part thereof, are not deductible under the provisions of this Act, the Board, at the colono's request or motu proprio, shall hold a hearing, at which the parties shall have an opportunity to make any claims and to submit proof in connection with the rights they may claim to have, and the Board shall decide the controversy.

* * *

Section 6. The following terms and conditions shall govern the transportation and hauling of the colono's cane:

(a) The central may provide means for the transportation of its colono's cane from the colono's farms to the central, and when such means is so provided, the central shall pay to the colono seven and one-half (7½) cents on

each ton of cane delivered, as compensation for hauling expenses; Provided, That if during the grinding season of 1950 any central has paid a higher amount for such expenses, the latter shall be the governing rate for said central. In case the central does not provide such means of transportation, it shall be bound to compensate the colono in the manner and to the extent hereinafter established, for the transportation of said cane from the colono's farm to the point of delivery designated by the central, whether such transportation is made with equipment belonging to the colono or leased by him. The central shall be bound to provide gratuitously to all its colonos hoisting service and the necessary personnel for the operation thereof at each point designated by the central for the delivery of cane. In the case of a new colono, or one who desires to change the point of delivery of the cane, and the central and the colono do not reach an understanding as to the point of delivery, the Board shall determine the point where the central shall receive the cane of the colono from abong the ones designated by the central.

(b) In those cases where the colono transports his cane, the central shall compensate him at the basic rate of fifteen (15) cents for each ton of cane transported, as hauling expenses, plus the sum of five (5) cents for each ton per kilometer, from the farm to the point of delivery, provided the distance to be covered from the farm to the point of delivery is one-half kilometer or more; Provided, That the colono shall be entitled to receive the basic compensation of fifteen (15) cents even if the distance to be covered from the farm to the point of delivery is less than one-half kilometer. For the purpose of this compensation, the distanec shall be determined from the normal or natural exit in the colono's farm where the cane was cut, to the point of delivery designated by the central. If upon determining the weight and the distance in the transportation and

hauling of the cane, there results a fraction of a kilometer or of a ton, a proportional compensation shall in both cases be paid for such fraction.

(c) In those cases where portable tracks have been used by the central for the transportation of a colono's cane, the central shall be bound to furnish to the colono, without any cost whatsoever to the colono, the said portable tracks and the necessary rolling material; and it shall also be bound to pay to the colono, as hauling expenses, five (5) cents for each ton of cane. The central may discontinue the practice of furnishing to its colonos, either directly or through any subsidiary entity, agent or contractor, portable tracks, provided it obtains the approval of the Board to do so. The Board shall be empowered to order any central to discontinue the use of any transportation system which, in the judgment of the Board, may be prejudicial to the interests of the colonos or of the industry.

(d) The compensation hereinabove provided for transportation and hauling, shall be paid weekly by the central.

(e) The centrals shall be liable to the colonos for the cane of the latter from the time it is received by them at the point of delivery designated by the central, except in cases of force majeure, or for reasons beyond the control of the central.

In no case shall the central be under obligation to pay more than one dollar for transportation and hauling.

With respect to the canes of the island of Vieques which are transported to Puerto Rico, insofar as hauling and delivery is concerned, the provisions of the Public Service Commission for the 1951 grinding season shall be maintained, until the Board, after hearing the parties, provides otherwise, which provision shall then govern.

Section 7. The provisional liquidations of sugar pertaining to the colonos shall be made fortnightly or monthly by the central, as may be determined by the Board, or in

default hereof, for the liquidation period used during the next preceding year, taking as the value of the sugar, for its liquidation, the average price of the sugar of Puerto Rico paid C.I.F. New York corresponding to the fortnight or month in which the cane has been delivered. Of the average prices of the sugar of Puerto Rico of 96 degrees of polarization in the New York market, determined as above prescribed, the central may deduct the sums it may deem necessary to cover shipment and marketing expenses in all the cases of such colonos as may not choose to receive their share of sugar as hereinafter provided; Provided, That whenever the colono believes that the sum deducted by the central for such reasons is excessive, he may request the Board to fix the sum which the central shall provisionally deduct for such purposes, and the Board is hereby empowered to do so; Provided, further, that the Board may, after a hearing of all the interest parties, provide another system of liquidation which may be fair and reasonable.

Whenever the colono, before December 1 prior to the beginning of the grinding season, so notifies the central, the latter shall be bound to deliver the total amount of sugar of 96 degrees pertaining to him in accordance with this Act and the regulations promulgated hereunder.

The colonos who choose that their share of the proceeds of their cane be liquidated in sugar, shall enjoy the right of storage in the warehouse of the central until the 31st day of December following the grinding season during which said sugar was produced, without payment of any amount whatsoever for the enjoyment of said right.

The central shall guarantee the colonos two hundred and fifty (250) pounds of sugar of 96° per each bag delivered to purchasers up to the 31st day of October following the grinding season during which the colono's sugar was produced. Any amount in dollars resulting in excess of said

guarantee, due to any difference in weight or polarization shall inure to the benefit of the central. Any amount in dollars in default of said guarantee, due to any difference in weight or polarization, shall be reimbursed to the colonos by the central. In both cases, said readjustment payments shall be made in cash and not in sugar.

The central shall deliver sugar to the colonos in new bags as of two hundred and fifty (250) pounds net each, and in case the central is compelled to use old bags, it shall compensate the colonos for the penalty imposed on the sugar due to the use of said old bags.

* * *

Section 33. Any party prejudiced by any regulation prescribed by the Board may request from the Board the reconsideration of said regulation within twenty (20) days after the promulgation thereof. Any party prejudiced by any order of the Board may request from the Board the reconsideration of such order within five (5) days after its notification. The request for reconsideration shall be submitted under oath and shall state the fundamental facts and grounds on which it is based.

The filing of the request for reconsideration in the manner and terms herein stated shall stay the regulation, decision or order, although only as regards the petitioner or petitioners and for a period which shall not exceed twenty (20) days from the date it takes effect, unless the Board shall extend the term of the suspension.

Proceedings may be brought in the Supreme Court of Puerto Rico for the review of the decision rendered on the matter, within the term of fifteen (15)days after its notification, if it concerns the challenging of an order of the Board, be appealed for review before the Supreme Court of Puerto Rico. There may be joined in one sole action several petitions for review when the questions raised are identical.

If after the petition for review has been filed and if the writ is granted, the petitioner shall then submit to the Supreme Court of Puerto Rico, within fifteen (15) days after the writ has been issued, copy of the original record of the case and also, if necessary, the transcript of the stenographic record thereof, duly certified by the secretary of the Board under the official seal thereof.

The petition for review shall produce the stay of the regulation, decision or order impugned only as regards the petitioner or petitioners and, whenever the court so directs, and upon the furnishing of a bond in the amount determined by the Court to insure full payment, plus interest, expenses, costs and attorney's fees, of any amount that the Board has directed to be paid, or of any amount owed, or of the damage that may be caused, when specific amount of money is not involved.

Appendix C.

RULE NO. 2 OF THE SUGAR BOARD OF PUERTO RICO.

RULE NO. 2.

Liquidation of Sugar Corresponding to the Colonos.

Section 1. Except for those cases covered by Section II of this Rule, the central shall liquidate in cash to its colonos their participation in the product of their cane, in accordance with the provisions of the Sugar Act and of Rule No. 1 of the Sugar Board.

Section II. The colonos shall have the option to have their participation in the product of their cane liquidated in sugar and when any colono before December 1 prior to the beginning of the grinding season so notifies the central, the latter shall be obliged to liquidate his participation in sugar, in accordance with the provisions of Section 7 of the Sugar Act.

Section III. When a colono notifies the central after December 1 before the beginning of the crop season that he wishes to liquidate in sugar his participation in the product of his cane the central is not required to, but may if it desires, liquidate in sugar.

Section IV. When a colono has not notified the central that he wishes to liquidate in sugar his participation in the product of his cane and the central makes his first liquidation in sugar, the colono shall have the right to refuse to accept the said liquidation and the demand liquidation in cash.

Section V. When a colono who has not notified the central that he wishes to liquidate in sugar his participation in the product of the cane, accepts without objection his first liquidation in sugar, this constitutes tacit acceptance of the system of liquidation in sugar for that crop and he

shall be barred to refuse or object the following liquidations that the central may make in sugar during said crop. The objections should be made to the central in writing and a copy sent to the Sugar Board.

Section VI. When the colono after having elected to liquidate in sugar deems it convenient to use the central as its agent for the sale of part or of all its sugar and both parties reach an agreement as to the terms of said agency, this agreement shall be put in writing and the central shall file with the Sugar Board, not later than ten days after the execution of said contract, a copy of the document signed by both parties.

Section VII. The provisions of this rule are separate and independent from each other and if for any reason any of its provisions are declared void by the competent court said decision shall not render void the sections of this Rule not included in said decision and they shall remain in force.

Section VIII. This rule shall take effect thirty days after its approval.

Appendix D.

Rule No. 4 of the Sugar Board of Puerto Rico.

Rule No. 4

System of Liquidation of Sugar Corresponding to Colonos Who Receive Their Share in Cash.

Article 1. The liquidation of sugar corresponding to the colono during the crop year of 1954 and subsequent years and until otherwise determined by the Sugar Board of Puerto Rico shall be made during the month of March of the year following the season in which the cane of the colono was ground, taking as basis the average price of 96° Pol. sugar, custom duties paid, C.I.F. New York, during the period elapsed from the first day of March of the year of the grinding season in which the cane of the colono was ground until the 28th day of February of the following year.

Article 2. The central shall advance periodically to the colono not less than 90% of the value of the sugar which correspond to the cane of the colono ground in the central, on the basis of the average price of 96° Pol. sugar, custom duties paid, C.I.F. New York, during the period in which the cane of the colono has been ground. The aforementioned advances shall be made in periods of two weeks or four weeks, fortnightly or monthly, at the option of the central.

Article 3. Upon making the advances, the central may deduct on account of shipping and selling expenses those sums which it reasonably deems necessary. This provisional estimate of shipping and selling expenses shall be adjusted when all of the sugar has been sold, as provided in Article 8 of the Sugar Act in effect.

Article 4. Whenever the colono deems that the sum

deducted by the central on account of shipping and selling expenses is excessive, he may request the Board to fix the sum which the central should deduct, provisionally, for these purposes and the Board shall decide, after a hearing of the parties, whatever shall be proper.

Article 5. By average price of 96° Pol. sugar, custom duties paid, C.I.F. New York, as used in this Rule, it shall be understood the simple average of daily quotations of 96° Pol. sugar in the New York Coffee and Sugar Exchange (domestic contract) adjusted on the basis of custom duties paid and adding to each daily quotation the federal custom duties on 96° Pol. sugar of Cuba for each day of the liquidation period or for each day of the period used as basis for making the advances, providing, however, that if the Sugar Board should find in any case, that said average price does not reflect the true market value of 96° Pol. Sugar (domestic contract) the Board shall have a right to determine the just and reasonable average price.

Article 6. The provisions of this Rule are separate and independent from each other and if for any reason any of its provisions are declared void by a competent court, such judicial decision shall not invalidate the sections of this Rule not included in said decision, and they shall remain in force.

Article 7. Any rule or regulation or part of a Rule or Regulation of the Sugar Board which is contrary to the present rule is hereby repealed.

Article 8. This Rule, being of an urgent and necessary character, shall take effect immediately after its approval.*

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* This Rule has been translated from Spanish into English by the Attorney for petitioner.